

## 研究報告

# A Study on Legislative and Administrative Factors behind Informal Artisanal and Small-scale Gold Mining (ASGM) in Tanzania

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### Abstract

This paper examines the case of artisanal and small-scale gold mining (ASGM) in Tanzania and discusses the legislative and administrative factors that make shifting from the informal sector to the formal sector difficult for ASGM. Artisanal and Small-scale Mining (ASM) activities operate in the informal sector in many cases, causing environmental degradation, health and safety problems, as well as child labor issues. According to the United Nations Economic Commission for Africa (UNECA), the estimated number of ASM workers and dependents in Tanzania is 1.5 million and 9 million, respectively. The bulk of Tanzanian ASM is ASGM, with operations and dependent contracts accounting for approximately 60 percent of the total ASM workers and dependents. This being the case, the government has recognized the importance of supporting ASM and integrating it into its national policies and development strategies, with further policy implementation expected to continue in the future. Given this context the following case study paper discusses the legislative and administrative structures behind informal ASGM.

### 1. Introduction

Appropriate means of government regulation of artisanal and small-scale mining (ASM) in Africa has been long disputed. In many cases ASM activities operate in the informal sector, meaning respective governments cannot control incidental issues like environmental degradation, health and safety problems, and child labor issues—not to mention the potential problem of fueling armed conflicts amongst competing entities. An equally serious problem is governments' loss of income that they should be collecting through royalties and taxes which could then be invested into economic stimulus activities and social welfare programs for the benefit of the people.

However, tight restriction on ASM activities is not a realistic measure for governments to adopt. In Africa many people are dependent on the income they earn both directly and indirectly from ASM activities. According to an estimate by the United Nations Economic Commission for Africa (UNECA) more than 8 million ASM workers were active in 2011 in 21 mineral-rich African countries, with about 46 million people who were financially rely on ASM operations<sup>(1)</sup>. International organizations and governments have thus recognized the

importance of supporting ASM as a means of economic and social development instead of attempting to restrict it too harshly.

Prominent among African ASM initiatives is the African Mining Vision (AMV). The AMV started in 2009 by African Union leaders in mineral producing countries. The AMV emphasizes the promotion of ASM “to stimulate local/national entrepreneurship, improve livelihoods, and advance integrated rural social and economic development”.<sup>(2)</sup> In accordance with the AMV's strategies, many mineral-rich African countries have integrated ASM support-measures into their government's mining policies and poverty reduction strategies.

The issue however is how might informal ASM shift into the formal sector and thereby allow governments more control in addressing current problems connected with ASM. So far there is no evidence that the implementation of regulatory policies and strategies such as those adopted by mineral-rich African countries have had a significant, successful impact on moving ASM into the formal sector<sup>(3)</sup>. Therefore, the question is what factors are there that encourage ASM workers to want to remain in the informal sector.

With this in mind, this paper examines the case of artisanal and small-scale mining of Tanzania, which has

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one of the largest number of ASM workers and dependents in Africa. To clarify issues of ASM, this paper particularly looks at artisanal and small-scale gold mining (ASGM) which accounts for the largest part of ASM activities in Tanzania. This paper first overviews the status of ASGM and then discusses some legislative and administrative structures that make shifting from the informal sector to the formal sector difficult for ASGM.

## 2. Status of ASGM in Tanzania

### 2.1 Brief history of ASGM in Tanzania

ASGM in Tanzania was first legitimized when the Mining Act was enacted in 1979 although small-scale placer gold mining was already operational even during the colonial period. ASGM achieved rapid growth during the 70s, propelled by the abolishment of the international gold standard system and rise in the gold price<sup>(4)</sup>. The growth of ASGM was later prompted by an influx of farmers into ASGM, who needed to diversify their means of livelihood after the initiation of the Structural Adjustment Program (SAP) in 1986 which abolished subsidized operations in the agricultural sector. A declaration by President Mwinyi in 1990 also gave the growth of ASGM greater impetus by liberalizing ASM for unregulated operation in the country<sup>(5)</sup>.

At present Tanzania retains the largest number of

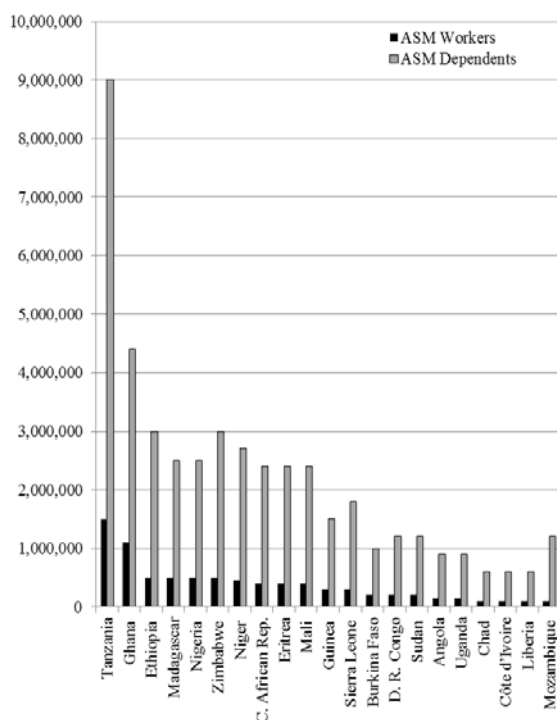


Fig. 1 Estimated Number of ASM in Africa<sup>(1)</sup>.

ASM workers in Africa<sup>(1)</sup>. The estimated number of ASM workers and dependents, who rely on incomes from ASM, in Tanzania is 1.5 million and 9 million, respectively<sup>(1)</sup>. ASGM accounts for the largest part of ASM activities, or approximately 60 percent of all ASM workers<sup>(6)</sup>. Based on this number, estimates indicate that roughly about one fifth and one eighth of all Tanzanians rely on ASM and ASGM, respectively.

Meanwhile, another sector of Tanzania's mining industry, large-scale gold mining (LSGM), offers quite the contrast to what is happening with ASGM. ASGM activities are inclined to conduct their operations in the informal sector due to their difficulty with meeting legislative requirements. LSGM activities on the other hand have expanded due to foreign investments which the Tanzanian government has been promoting since the mid-90s<sup>(7)(8)</sup>. With the expanded LSGM activities in mind, the Tanzanian government has emphasized its support for ASM through official policy objectives such as the National Strategy for Growth and Reduction of Poverty II (MUKUKUTA II) and the Mineral Policy 2009, both of which aim to shift informal ASM into the formal sector eventually<sup>(9)(10)</sup>.

Policies aimed at shifting informal ASM into the formal sector include allocating mining plots specifically for ASM, establishing legal and regulatory requirements for mine workers, as well as policies that are geared to the more technical aspects of operating ASM<sup>(6)</sup>. Despite the measures that the government has already taken, still further policy implementation is expected<sup>(11)</sup>.

### 2.2 ASGM System in Tanzania

The Mining Act (2010)<sup>(12)</sup> defines ASM (which includes ASGM) in Tanzania as a mining operation "whose capital investment is less than US \$100,000 or its equivalent in Tanzania shillings." In a formal ASM operation, the ASM worker is required to have a Primary Mining License (PML) in order to officially maintain the mining right in a potential area for the period of seven years. The right to mine an entitled area can be renewed and even transferred to another miner.

In the case of ASGM, after an ASGM worker becomes a PML holder, in many cases, the holder rents a potential mining area to pit holders<sup>(4)(13)</sup>. Pit holders then either mine by themselves or commission diggers to mine<sup>(14)</sup>. Once a pit holder and diggers start yielding gold ores, the PML holder, through official channels, markets the ores to registered processors who then sell

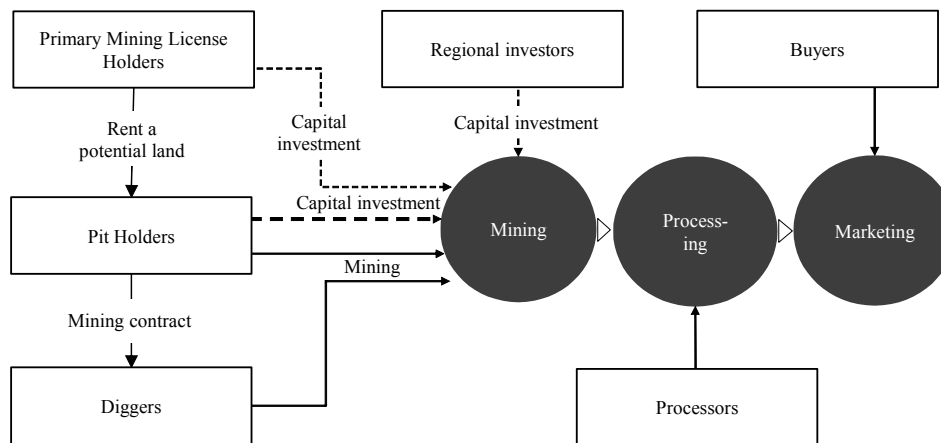


Fig. 2 ASGM System in Tanzania.

the processed gold to registered buyers for further marketing.

While the PML holder is responsible for all of the mining operations in the entitled area, in many cases it is the pit holders who play roles of investing capitals and handling the labor arrangements. Therefore, pit holders take the most financial risk during fruitless periods. In some cases though, the capital investment is made by regional investors. Figure 2 shows stakeholders in a typical ASGM system and their roles and relationships among them.

Although it could vary depending on the particular locality, allocating the profits after a successful yield of gold is roughly 30 percent for a PML holder, 40 percent for pit holders, and 30 percent for diggers in a typical pattern found in the northwestern part of Tanzania where ASGM has been traditionally active<sup>(4)(14)</sup>.

### 3. Factors behind Informal ASGM

Before enacting rules to formalize ASGM in Tanzania, it is essential to examine whether or not the present informal ASGM workers can comply with the Mining Act (2010) and whether or not the government's support system for ASGM is adequate. The following discusses legislative and administrative structures behind informal ASGM.

#### 3.1 Legislative factor

Meeting legislative requirements is one of the most difficult factors for informal ASGM workers to overcome. To be legalized, an ASGM worker needs to acquire a Primary Mining License (PML) as stipulated in the article 54 of the Mining Act (2010). However, acquisition of a

mining license is based on a first-come, first-served basis. Those who do not have access to reliable information are discouraged from applying for a mining license. LSGM operators, multi-national companies or their junior companies, in most cases, have the advantage since they are relatively in a better position of acquiring the necessary information on potential mining opportunities<sup>(14)</sup>. Unlike ASGM, multi-national corporations are able to spend a considerable amount of financial resources in exchange for information on mining resource potential from prospectors.

Therefore, the government has allocated mining areas specifically for ASGM as part of its supporting measures. However, ASGM workers are not necessarily anxious to do their mining activities in the specified areas. And, PML holders are in fact not always operating specified areas<sup>(6)</sup>. Regardless acquiring a mining license for non-specified areas is still on the first-come, first-served basis.

Even if an ASGM worker successfully acquires a PML, the PML holder should comply with Article 55 of the Mining Act (2010) to "take all responsible measures on and under the surface for the purpose of mining operation" including capital investment, payment of royalties and taxes, and environmental and social protection<sup>(12)</sup>. For example, based on the Mining Regulation, which supplements the Mining Act (2010), a PML holder is required to submit an Environmental Protection Plan within four months from the date of acquiring a PML<sup>(15)</sup>. This should be accompanied with results of an environmental investigation and a social study conducted by an independent expert<sup>(15)</sup>. The Mining Act (2010) in other words cannot make all ASGM workers

inclusive in the formal sector, assuming that a formal ASGM worker is technically and financially capable of meeting all the requirements.

When an ASGM worker decides to be in the informal sector, their burden is reduced by evading or disregarding environmental and social legal requirements. However, limited formal access to credit for capital investment is still an obstacle. To meet capital needs, in one case, an informal ASGM without sufficient financial resources asked residents in the mining area to contribute their own working capital (like shovels or other hand-tools for mining) while in another case a middleman provided working capital in exchange for a promise that gold would be sold back at a lower price than the official market price<sup>(13)</sup>. Thus, even without a PML, informal ASGM has a way to make a mining pit operational without meeting legislative requirements and going through cumbersome procedures to acquire a PML.

### 3.2 Administrative factor

Another structural factor behind informal ASGM is the centralized administration of the mineral sector. The centrally responsible organization is the Ministry of Energy and Minerals (MEM) which has Zonal Mines Offices and Residential Mines Offices across the country.

The centralized administration in the mineral sector is justifiable since it involves critical issues such as a negotiation with foreign investors and equitable distribution of resource benefits at the national level which has an obvious influence over country's overall economy. However, the centralized system in the current administrative structure cannot identify technical, financial, and information needs of ASGM at mining sites and thus cannot provide and coordinate the appropriate services to shift informal ASGM into the formal sector.

In the case of Tanzania, the central government has decentralized its administrative function giving more decision-making power to the local governments over decades. At the regional level, there are Regional Offices acting as operating arms of the central government. At the district level, Local Government Authorities (LGAs), that have rather extensive discretionary powers, provide public services in their jurisdiction in response to various people's needs. Provision of public services is made through their operating arms at Ward Offices which staff technical officers of different sectors. Even at the village level, a Village Executive Officer is stationed by the LGA and takes administrative and coordination responsibilities.

However, issues related to the mining are out of the responsibility of LGAs due to the institutional set-up of the centralized mining sector. LGAs actually do not regard the mining sector as part of their responsibility and this entails exclusion of the mining sector from LGA's planning<sup>(16)</sup>.

With the current arrangement of the MEM, mine officers at Zonal Mines Offices are responsible for providing technical services to ASM through Residential Offices. However, Zonal Mines Offices are responsible for mining issues including provision of licenses and technical services to as many as 3 to 4 regions at a time, which sometimes includes more than 25 districts. Even in the relatively established decentralized administration of the local government, recent studies show that public services have not been delivered effectively in response to community needs<sup>(17)(18)(19)</sup>. In consideration of limited funds and limited access to remote mining communities<sup>(20)</sup>, Zonal Offices and Residential Offices are most probably not able to provide appropriate public services to the needs of ASGM communities.

## 4. Conclusion

This paper discussed two major structural factors behind informal ASGM: the Mining Act (2010) and the administrative structure to govern ASGM activities. The Mining Act (2010) is not a means to discourage informal ASGM workers unless they are capable of going through procedures to acquire a PML and are able to meet environmental and social requirements necessary for mining operations. However, there is a gap between the current situation and the legislative assumption. Therefore, governmental support is essential. However, government support alone is not sufficient partly due to the administrative capacities and the structure of the mining sector.

Further studies are to be carried out on factors to promote supportiveness of the government in addition to structural factors discussed in this paper. Moreover, to formulate a concrete measure to shift ASGM into the formal sector, it is necessary to understand clearly to what extent ASGM workers choose to remain operating in the informal sector and how much their incentive to stay is as well as what kind of incentives they have.

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# タンザニアにおけるインフォーマル零細金鉱業を取り巻く 法的・行政的要因の検討

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本論は、アフリカにおける零細鉱業をインフォーマル化させている要因を検討するため、零細鉱業を取り巻く制度的要因について議論するものである。アフリカ鉱物資源国の多くでは、土壌劣化や環境汚染、劣悪な労働安全衛生ならびに児童労働など、零細鉱業のインフォーマル化がもたらす影響が深刻化している。零細鉱業従事者数 150 万人（国連アフリカ経済委員会推定）を有するタンザニアでも、零細鉱業のインフォーマル化がもたらす様々な問題が表面化している。このため、タンザニア政府は、国家貧困削減戦略ならびに鉱業政策に零細鉱業支援を位置付けてきたものの、その実施は必ずしも十分とは言えない。本論は、アフリカにおけるインフォーマル零細鉱業のフォーマル化に資するため、特にタンザニアの零細金鉱業を事例として、フォーマル化の隘路となる可能性がある法的・行政的要因について検討する。

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